

1 THE COURT: Okay. Are you about ready to get
2 back to where we were, sir?

3 MR. GREER: Yes, sir.

4 THE COURT: When you're ready, plunk your
5 magic button.

6 (The video deposition of Jeffrey P. Frank is
7 resumed.)

8 THE COURT: Looks like they are still working
9 on the other matter. So do you have another witness?

10 MR. ROBERTSON: Yes, Your Honor. I do have
11 the Excel Spreadsheet was sent to Lawson on
12 December 31 containing the excerpts of the Frank
13 deposition that were to be played. The ones that
14 are --

15 THE COURT: Well, give it to them. They are
16 working on it.

17 MR. ROBERTSON: If they are working on it,
18 fine, Your Honor. We don't need to delay and retain
19 the jury.

20 THE COURT: No, we're not going to hold the
21 jury up for this. We're moving right along.

22 MS. ALBERT: EPlus would call Hannah Raleigh.

23 THE COURT: Where is Ms. Raleigh?

24 MS. ALBERT: I understood she was here in
25 person.

1 THE COURT: Who is she?

2 MS. ALBERT: She's an employee from Lawson.

3 THE COURT: Okay.

4 MS. ALBERT: Your Honor, if I could just have
5 a brief moment. We have some exhibit binders for
6 Ms. Raleigh and the Court.

7 THE COURT: You're going to trust
8 Mr. Robertson to handle that?

9 MR. ROBERTSON: We're all in trouble then.

10 THE COURT: Here he comes. Oh, no.

11 MS. ALBERT: It's not quite as daunting as it
12 might appear. There are just a couple of voluminous
13 documents. I think there are two binders total.

14 THE COURT: I wonder if your cap and trade
15 bill would include deductions for paper killing for
16 law firms. Tree killing.

17 Is that for me? Thank you for my present.
18 Thank you, sir.

19 All right.

20 HANNAH RALEIGH, called by the Plaintiff, first
21 being duly sworn, testified as follows:

22

23 DIRECT EXAMINATION

24 BY MS. ALBERT:

25 Q Would you state your full name for the record,

1 please?

2 A Hannah Edmundson Austin Raleigh.

3 Q You are currently employed by Lawson with its
4 professional services organization; is that correct?

5 A That's correct.

6 THE COURT: Can you hear all right, ladies
7 and gentlemen?

8 THE JURY: Yes.

9 THE COURT: If you have any problems, let us
10 know.

11 MS. ALBERT: I have a little bit of a hoarse
12 voice.

13 THE COURT: No, I was talking about the
14 witness.

15 BY MS. ALBERT:

16 Q Your current position at Lawson is one of practice
17 director; is that correct?

18 A That's correct.

19 Q And your responsibilities as practice director are
20 to oversee customer implementations of Lawson's
21 products at new customers and significant
22 implementations of current customers in the eastern
23 region of the United States; is that correct?

24 A That's right.

25 Q And your responsibilities as practice director

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1 include overseeing customer implementations of
2 Lawson's procurement products; is that correct?

3 A That's correct.

4 Q Now, Lawson's Professional Services Organization
5 has roughly 1500 employees worldwide; is that correct?

6 A That's roughly correct, sure.

7 Q Isn't it true that 90 percent or more of Lawson's
8 customers engage Lawson Professional Services at some
9 time for some form of assistance over the course of
10 their relationship with Lawson?

11 A Yes, over the course of their full use of the
12 products, yes.

13 Q Now, among the different types of services
14 provided by Lawson's Professional Services
15 Organization to Lawson's customers, those services
16 would include training services; is that correct?

17 A Absolutely.

18 Q And Lawson's Professional Services Organization
19 also provides services that are referred to as project
20 management services to Lawson's customers; is that
21 correct?

22 A Yes, we do.

23 Q Lawson's Professional Services Organization also
24 services that are referred to as implementation
25 consulting services; is that correct?

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1 A That's correct.

2 Q And Lawson's Professional Services Organization
3 also provides services that are referred to as upgrade
4 consulting services; is that correct?

5 A That's correct.

6 Q And those upgrade services would involve assisting
7 the clients with upgrading from one version of a
8 Lawson system to the next released version of that
9 system; is that correct?

10 A That's correct.

11 Q Lawson's Professional Services Organization also
12 provides technical development services to customers
13 such as interface development and customization
14 development services; is that correct?

15 A We do at times, yes.

16 Q Lawson's Professional Services Organization also
17 offers services to Lawson's customers that are
18 referred to as learning services; is that correct?

19 A That's true.

20 Q Among the learning services that Lawson's
21 Professional Services Organization provides to
22 Lawson's customers would be public instructor led
23 training in one of Lawson's offices or on site
24 instructor led training for a specific customer at
25 their site; is that correct?

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1 A Sure.

2 MS. ALBERT: Mike, if you would, could we
3 have Plaintiff's Exhibit 202.

4 Q And, Ms. Raleigh, that is in Volume I of your
5 binders.

6 THE COURT: Before you go anywhere, what was
7 the exhibit number for that Frank deposition? You're
8 going to have to put it in the record because the
9 court reporter wasn't taking it down. Just look it up
10 and tell me later.

11 Go ahead, Ms. Albert.

12 Q Do you have Plaintiff's Exhibit 202?

13 A I do.

14 Q Is Plaintiff's Exhibit 202 a catalog of online
15 courses that Lawson offers to its customers?

16 A Yeah. It's a catalog that was published at a
17 certain point in time, but yes.

18 Q Can you turn, please, to page 5 of that exhibit,
19 and the Bates number on that page ends with 4027?

20 A I'm there.

21 Q Do you see at the top of the page there's a course
22 entitled inventory control 8.1/9.0 X?

23 A I do.

24 Q And Lawson offers this two-day course entitled
25 Inventory Control 8.1/9.0 X that provides its

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1 customers with -- and I'm reading from the first line
2 there. Instructions on the key setup components and
3 processing functionality of the inventory control
4 application; is that correct?

5 A That's correct.

6 Q And among the training included in that course
7 would be, in following along with the second sentence,
8 instructions on the key setup components and
9 processing functionality -- excuse me, instructions
10 concerning how to set up the item master associated
11 with the inventory control application; is that
12 correct?

13 A Yes, that's right.

14 Q Turn to page 6 of that exhibit, please. Do you
15 see on that page there's a course entitled,
16 Requisition Self Service 8.1-9.0?

17 A Yes.

18 Q Lawson also offers a course entitled, Requisition
19 Self Service 8.1/9.0, which introduces major features
20 of requisition self service such as requisition
21 approvals, receiving, and the shopping experience
22 which includes searching the catalog for items, using
23 shopping lists, ordering specials or services, and
24 ordering by categories; is that correct?

25 A Yes.

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1 Q In this course, Lawson enables its customers to
2 have an experience using an actual Lawson training
3 system that would have the requisition self service
4 application installed; is that correct?

5 A Yes.

6 Q I believe I'm done with that document.

7 A Okay.

8 Q Lawson's Professional Services Organization also
9 provides services to Lawson's customers that consist
10 of installing the Lawson software on the customers'
11 hardware; is that correct?

12 A Yes.

13 Q And you previously mentioned that Lawson provides
14 implementation services to its customers. Do you
15 recall that?

16 A Yes.

17 Q Among the implementation services that Lawson
18 provides to its customers, those services would
19 include assistance with designing the configuration of
20 the Lawson software to meet the customer's business
21 requirements; is that correct?

22 A Yes.

23 Q Also included among the implementation services
24 that Lawson would provide to its customers would be
25 assisting the customer with developing test scripts

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1 and assisting the customer with testing the software
2 on that equipment; is that correct?

3 A Yes, we assist with customer with all the aspects
4 of implementing the software and those would be
5 included.

6 Q Among the aspects included with implementation
7 would be all aspects up to and including bringing a
8 system live into actual production operation; is that
9 correct?

10 A That's right.

11 Q Lawson also provides -- when a customer's system
12 goes live, that means it's actually operational and in
13 an actual production environment to perform the
14 procurement process; is that correct?

15 A We hope so, yes.

16 Q Now, also included among the services that Lawson
17 would provide to its customers, Lawson can provide
18 hosting services or Lawson physically hosts the
19 customer's system in space that Lawson owns if the
20 customer so desires; is that correct?

21 A We can.

22 Q And Lawson also provides services to its customers
23 to support converting existing systems and conversion
24 of data from those existing systems into the proper
25 format for importation into a Lawson system; is that

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1 correct?

2 A Yes. All of our customers are importing from a
3 previous system, so yes.

4 THE COURT: Excuse me just a minute. I don't
5 know that any of us over here know what hosting means.
6 The way it's been explained sort of leads me to the
7 impression that Lawson has everything on its computer
8 system, but if I'm the customer, I can be in Timbuktu
9 and just use my computer, and I go through you to get
10 what I want. Is that basically right or wrong?

11 THE WITNESS: The only clarification I would
12 make to that is that the system is actually still the
13 customer's system. So it is their system. It is
14 physically housed in a Lawson-owned or leased
15 facility. Obviously, we take care of keeping the
16 lights on and the electricity and those of things, but
17 the system can be accessed, you're correct, from
18 Timbuktu or anywhere else in the world using Internet
19 protocols.

20 Q And Lawson will assist its customer with
21 implementing those systems that it hosts in its own
22 facilities among other services; is that correct?

23 A Yes. It makes no difference where that hardware
24 lives.

25 Q Lawson also provides workshops to educate its

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1 customers on data migration requirements and data
2 mapping to put this data that's imported from a prior
3 system into a Lawson system; is that correct?

4 A That's right.

5 Q And Lawson Software includes within the software
6 import and export utilities that can be utilized for
7 this data conversion process; is that correct?

8 A That's correct.

9 Q As part of the data conversion effort, Lawson's
10 Professional Services Organization will actually
11 convert item master data from a client's preexisting
12 system to a format for use in the Lawson procurement
13 system; is that correct?

14 A Yes. When requested to help them with that, yes.

15 Q Have you actually been involved in implementation
16 projects where the customer has so requested Lawson to
17 perform data conversion efforts?

18 A Yes, I have been involved in some projects where
19 the customer needed assistance from the Lawson team to
20 do various elements of that conversion process.
21 Sometimes some steps and sometimes other systems, but
22 certainly I've been involved in projects where we
23 participate in that process.

24 MS. ALBERT: Mike, if we could have
25 Plaintiff's Exhibit 216. And, Ms. Raleigh, that's in

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1 Volume II of your binders.

2 Q Are you there?

3 A I'm here.

4 Q Ms. Raleigh, is this a copy of Lawson's statement
5 of work for system implementation it performed for the
6 Public Health Trust Jackson Health System?

7 A Yes, it is.

8 Q And you were Lawson's practice director that
9 oversees the implementation of Lawson's system for
10 this client; is that correct?

11 A That's correct.

12 Q And Lawson received the award of the contract for
13 this particular implementation project; is that
14 correct?

15 A That's right.

16 MS. ALBERT: Mike, if you could turn to page
17 15 of the exhibit and the Bates number on that page
18 ends with 5374.

19 Q Do you see the heading on that page entitled "Data
20 migration and conversion scope"?

21 A I do.

22 Q Below that there's an item, 3.5.1 that refers to
23 master file and configuration table value builds, do
24 you see that?

25 A I do.

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1 Q And the text below that indicates that the data to
2 be converted will be identified during the design
3 phase. The Lawson functional consultants will provide
4 assistance with data mapping support, data loading
5 support, and executing uploads via Lawson add-ins tool
6 to build the required master files and
7 configuration/setup table values. Do you see that?

8 A I do.

9 Q And the Lawson professional consultants did
10 actually provide this assistance to Jackson Health
11 System as indicated in the statement of work; is that
12 correct?

13 A We did.

14 Q And in the second paragraph below that, the second
15 sentence of that paragraph, indicates that the
16 customer will have access to Lawson's conversion
17 manuals and file layouts. Do you see that?

18 A I do.

19 Q Did Lawson actually provide the customer Jackson
20 with the Lawson conversion manuals and file layout as
21 indicated in the statement of work?

22 A We did. I want to clarify that this entire
23 section does refer to all of the aspects of the
24 implementation, not purely the procurement
25 implementation. So our involvement over the course of

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1 the project may have, you know, been different
2 depending on which part of the system we were building
3 at the time. So there could be differences, but yes.

4 Q But this particular implementation project did
5 include the procurement modules; is that correct?

6 A It did.

7 Q Continuing on with that second sentence in the
8 second paragraph, it indicates that conversion work
9 session will be conducted to review the Lawson's
10 standard conversion programs and conversion process.
11 Do you see that?

12 A I do.

13 Q And Lawson did provide that conversion work
14 session to review the Lawson standard conversion
15 programs and conversion process for Jackson, correct?

16 A Absolutely.

17 Q Can you turn to page 16 of the exhibit and the
18 Bates number on that page ends with 375.

19 A Yes, I'm there.

20 Q That's table on this page entitled
21 "Responsibilities for master file and configuration
22 table value builds," do you see that?

23 A I do.

24 Q The table on this page relates to which party is
25 going to have responsibility for particular tasks

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1 during the implementation project; is that correct?

2 A That's right.

3 Q The second task in the table indicates that Lawson
4 would be responsibility to provide cross functional
5 workshops to define the data migration process and
6 mapping required for Jackson. Lawson did actually
7 provide such a cross functional workshop to define the
8 data migration process and mapping for Jackson Health
9 System, didn't it?

10 A We did.

11 Q And the next activity below that in the table
12 relates to migration strategy and process description.
13 Do you see that?

14 A I do.

15 Q And Lawson also provided Jackson Health System
16 with migration strategy and process description,
17 correct?

18 A We did.

19 Q And if you proceed down, I believe it's the sixth
20 task in the chart, it's identified as training and
21 data migration tools. Do you see that?

22 A Yeah, I do.

23 Q And the Lawson personnel delivered standard
24 training and education courses relating to data
25 migration tools to Jackson personnel; isn't that true?

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1 A We did. I would probably refer to it more as
2 knowledge transfer than standard training or
3 education. It was less formal than it maybe sounds
4 here, but we did help them understand those tools.

5 Q And the last task on that page is identified as
6 test load sample data, do you see that?

7 A I do.

8 Q It indicates that the client would be responsible
9 for providing sample data and then Lawson is
10 responsible for executing the load of the test data.
11 Lawson, in fact, executed the load of the test data
12 for Jackson in connection with this project; is that
13 correct?

14 A Yes, we did.

15 Q Can you turn to the next page of the exhibit.
16 That Bates No. on that page ends with 376?

17 A I'm there.

18 Q The first task on this page is identified as
19 production data load. Do you see that?

20 A I do.

21 Q And the table indicates that Lawson was
22 responsible for executing the load of the test data
23 for Jackson. Lawson did in fact, load the production
24 data for Jackson in connection with this
25 implementation project, correct?

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1 A We did. I believe we did.

2 Q And continuing down the page. Lawson also
3 conducted a full migration system test for Jackson in
4 connection with this project; is that correct?

5 A We did.

6 Q And Lawson was also responsible for the live data
7 migration for Jackson system, correct?

8 A We were.

9 Q If you look down below that table on the same page
10 there's another table, table 3.5.1.1.1, do you see
11 that?

12 A I do.

13 Q And the title on that table is master file in
14 configuration table value build and scope; do you see
15 that?

16 A I do.

17 Q And the table on this page identifies the master
18 files and configuration tables that were included
19 within the scope of the implementation project that
20 Lawson conducted for Jackson; is that correct?

21 A Yes.

22 Q So the data conversions that were included within
23 the scope of the project that Lawson performed for
24 Jackson included the vendor master, the item master
25 and the vendor catalog; is that correct?

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1 A I would agree with the vendor master and the item
2 master, but if you note, there's a bolded Lawson
3 response next to the vendor catalog specification.
4 I'll also note that the system that was being convert
5 from was Eclipsys, right? So the terminology used
6 here to describe the data is really more relevant to
7 the system from which the data was coming.

8 But if you note the Lawson response related to
9 catalog, vendor catalog, it's really more that that is
10 purely item master data. So we really included the
11 item master data that they may be referring to based
12 on Eclipsys' terminology of the vendor catalog.

13 Q If lawson provided a response to Jackson here that
14 said catalog information is a part of Lawson's item
15 master, it wouldn't be converted as part of conversion
16 item No. 22 above; is that correct?

17 A Based on the definition of catalog information
18 that, I believe, was related to Eclipsys' definition
19 of vendor catalog information.

20 Q But Lawson told Jackson that the vendor catalog
21 data in Jackson's prior system would be included as
22 part of the data that would be converted in connection
23 with this project, right?

24 A Right. Essentially, we told them that that is
25 item master data, so it would be included under item 2

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1 there for item master.

2 Q Lawson also provides maintenance and support
3 services to its customers; is that correct?

4 A We do.

5 MS. ALBERT: Mike, if you could, could you
6 put up Plaintiff's Exhibit 208.

7 Q And, Ms. Raleigh, that's in Volume I of your
8 binders.

9 A I'm there.

10 Q Plaintiff's Exhibit 208, this is a handbook that
11 Lawson publishes to its customers to tell them about
12 the types of support services that Lawson offers; is
13 that correct?

14 A That's correct.

15 Q Could you go to page 17 of the exhibit, and the
16 Bates number on that page ends with 050?

17 A I'm there.

18 Q Now, with reference to the chart on that page, it
19 shows that Lawson has four different levels of support
20 services; is that correct?

21 A That's correct.

22 Q There's a bronze level of support service.
23 There's a base maintenance support level; is that
24 accurate?

25 A That's accurate.

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1 Q There's a silver level of support services.

2 That's an enhanced level of support; is that correct?

3 A That's right.

4 Q And then there's a gold level of support services

5 that's entitled, Application Management; is that

6 accurate?

7 A It incorporates Application Management in addition

8 to others, yes.

9 Q Well, as we're proceeding up this chart, for each

10 successive level of support, Lawson would provide all

11 of the support at the level beneath that level plus

12 the additional support listed for the level that it

13 relates to; is that accurate?

14 A That's accurate.

15 Q Then there's a top level of support entitled,

16 Platinum that relates to hosted solutions; is that

17 correct?

18 A That's right.

19 Q So some services that would fall within the base

20 or bronze level of maintenance services that Lawson's

21 provides to its customers would include providing them

22 with upgrades to licensed products; is that accurate?

23 A That's true.

24 Q The enhanced level of support service that Lawson

25 provides to its customers at the silver level of

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1 support would include 24 by 7 emergency support; is
2 that correct?

3 A Yes, that's correct.

4 Q By 24 by 7 emergency support, that means 24 hour
5 by seven-day emergency support; is that correct?

6 A That's right.

7 Q In addition to the support services, Lawson can
8 also provide various different types of documentation
9 to its customers through its support website; is that
10 correct?

11 A That's right.

12 Q And at the bottom of the page there's some
13 additional options listed there. So Lawson will also
14 provide, for example, an additional option of pager
15 support services for a client; is that correct?

16 A That's right.

17 Q So if a customer has as critical event happening
18 during nonbusiness hours, a Lawson support person
19 would be on call for the customer to respond to that
20 problem; is that correct?

21 A That's right.

22 Q And Lawson also offers something that's called a
23 Lawson knowledge base; is that accurate?

24 A We do.

25 Q That's included for customers that subscribe to

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1 the base level of support; is that correct?

2 A That's right.

3 Q And this knowledge base includes documentation
4 such as user manuals and product release notes and
5 frequently asked questions and documentations of that
6 of support; is that correct?

7 A That's right.

8 Q And Lawson also offers services that are referred
9 to as WebEx online support center services where a
10 Lawson support person may access a customer system
11 over the Internet and take control of the customer's
12 system to diagnose a problem; is that correct?

13 A Depending on the nature of the problem, yes, we
14 might use that tool.

15 MS. ALBERT: No further questions.

16 THE COURT: Any questions?

17 MR. SCHULTZ: Yes, Your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. SCHULTZ:

21 Q Good afternoon, Ms. Raleigh.

22 A Good afternoon.

23 Q It's fair to say that Lawson helps its customers?

24 A Absolutely.

25 Q As part of helping your customers, do you learn

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1 about what your customers do with the Lawson system?

2 A Certainly.

3 Q I'd like you to refer back to Exhibit 216, please.

4 A Yes, sir.

5 Q Are you there?

6 A I am.

7 Q This is the same exhibit that you were referenced
8 to during the examination by Ms. Albert?

9 A Yes. The statement of work, yes.

10 Q Before Lawson gets to a statement of work, what is
11 the process for Lawson to obtain the work from a
12 particular customer?

13 A The process often starts with and did for Jackson
14 start with requests for proposal that the customer
15 issued to multiple software vendors based on the
16 business processes or the functionality of what they
17 needed to run their business. So that process enables
18 each of the vendors to respond to the customer's
19 questions about what functionality we have within our
20 software and hopefully get to a point where they
21 understand that we can meet their business needs.

22 So that process takes quite awhile and certainly,
23 you know, is fairly iterative. At the, you know,
24 conclusion of the sales process, typically when a
25 customer has chosen to work with a particular vendor,

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1 in this case Lawson, they then also begin to talk
2 about how they're going to get the software
3 implemented.

4 So there may be a separate competitive cycle or
5 maybe not for choosing a services partner, choosing
6 someone to help them, train them, and work with them
7 throughout the process of getting the software
8 implemented.

9 Q In the RFP process, that's when the customer is
10 actually providing to Lawson and other potential
11 vendors what it wants; is that right?

12 A Exactly.

13 Q So as part of that have process, whose language is
14 being used in an RFP?

15 A The customer is using their language essentially
16 because they are issuing it to different vendors. So
17 there's no common language, if you will, between
18 different vendors and how they, you know, how they
19 describe their software, the business processes.
20 There are lots of terms that are unique to different
21 vendors.

22 So a customer generally would base that RFP and
23 their questions on their past experience, whether it's
24 the way in which they describe a business process
25 inside their organization -- as an example, some

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1 companies call it material management. Some companies
2 call it supply chain. Some companies call it
3 strategic sourcing. It all refers to that process of
4 getting materials into the organization. But everyone
5 has different ways of naming their departments, etc.

6 It also may be based on the software that they are
7 currently using. So very often we work with customers
8 who have been using the same software for 20 years.
9 So even though the terminology is really based from
10 another company's software product because it's been
11 in place for so long, it's just become way that they
12 speak.

13 Q So in the process of working with Jackson in the
14 RPF process, did Jackson use its language from its
15 historic system?

16 A Yes, from Eclipsys.

17 Q What is Eclipsys?

18 A Eclipsys is another provider of business
19 management software. And Jackson, in particular, was
20 using their accounts payable and materials management
21 solutions.

22 Q And Jackson came to Lawson and said, We've got
23 this opening. Can you provide what we want? Is that
24 the process?

25 A That's right.

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1 MS. ALBERT: Leading, Your Honor.

2 Q What happened then?

3 THE COURT: Wait a minute. What?

4 MS. ALBERT: Leading.

5 THE COURT: Does it really make a difference
6 at this stage?

7 MS. ALBERT: I'll withdraw it.

8 THE COURT: What I'd like you to do is ask
9 one question. I'd like you to listen to the question
10 and give an answer that responds only to the answer
11 and not continue beyond where that's required.

12 Q Ms. Raleigh, I'd like you to turn on Exhibit 215.
13 Please turn to 215 of that. It ends with the Bates
14 No. 5374.

15 A I'm sorry. Which page?

16 Q If you will look in the bottom right-hand corner
17 you will see numbers. Look at the one that ends with
18 5374, please.

19 MR. ROBERTSON: 216, Your Honor.

20 THE COURT: I thought you said Exhibit 215.

21 THE WITNESS: Me, too.

22 A 5374.

23 THE COURT: That's the one I think you were
24 talking about before. Data migration and conversion.
25 Is that the page you're talking about?

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1 MR. SCHULTZ: That is the page I'm talking
2 about, Your Honor.

3 A All right. I'm there. Thank you.

4 Q So this page talks about data migration and
5 conversions. What is a data migration?

6 A Data migration is the process of getting data from
7 a customer's legacy system formatted into the
8 appropriate format to be loaded into, in this case,
9 Lawson.

10 Q You say has to be formatted into the appropriate
11 format. What do you mean by that?

12 A Every software has a proprietary format in which
13 data must be in ordinary for it to be loaded. For
14 instance, there may be a certain character length for
15 a particular field, the columns of data must be in a
16 particular order in order for the software to read in
17 that data.

18 Q I'd like to refer you to what happened with
19 Jackson. Was there a particular file format that
20 Lawson wanted Jackson to transfer its information into
21 Lawson system?

22 A Yes.

23 Q How did that happen?

24 A Through the process of the implementation, Lawson,
25 as referred to before, provided Jackson with the

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1 standard documentation of the file format in which the
2 data must reside. Jackson then extracted their data,
3 pulled their data out of their existing system,
4 Eclipsys, and manipulated data or changed the data so
5 that it would be into the right format, and then
6 provided it to Lawson for loading into their system.

7 Q I'd like to talk with you about the changing of
8 the data, but, first of all, you mentioned file
9 layout. Is that what you were talking about earlier?
10 Better question: What is a file layout?

11 A File layout would be documentation of the specific
12 order of and description of data required to be loaded
13 into the system. So what data, in what format, in
14 which order, that's all documented in a document
15 called a file layout.

16 Q So was there a transfer of the data from the
17 legacy system, Eclipsys, into the Lawson system?

18 A Yes, there was.

19 Q Was there a conversion of the data from the legacy
20 system into what the Lawson item master has?

21 A Yes, there was.

22 Q Were there fields that were changed?

23 A Yes, absolutely.

24 Q Was data changed?

25 A Yes.

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1 Q What fields were changed?

2 A Some of the fields that were changed may have been
3 related to the descriptions associated with an item.
4 So in order to make it easy for a user to find a piece
5 of data, we need to think like the user, right? So at
6 times the description field is what the user looks at.
7 So I'm looking for a syringe, for instance. My
8 description field can help me understand, you know, if
9 I've found the right syringe. Is it a half cc? Is it
10 1 cc? Is it various different features of that
11 particular product? So over the course of time those
12 descriptions can become outdated or not as clear as we
13 might like them or easy to use.

14 So in many cases, what we did at Jackson was
15 revise those descriptions to ensure the best possible
16 experience for the user in finding their products.

17 Q What if anything codes or specific language did
18 Jackson use in its item descriptions?

19 A Jackson, like all hospitals, has a particular way
20 of coding. So, for instance, some organizations might
21 use BX for box. Other organizations might use BOX for
22 box. There are different ways that each
23 organization's standards, if you will, that they have
24 set will so there's consistency in the data. So those
25 kinds of things would have been changed and updated to

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1 ensure they were as correct as possible.

2 Q Was there a process to validate the data before it
3 gets into the Lawson system?

4 A There's meant to be there, yes. There is a
5 process for that.

6 Q First, let's talk about what the process is and
7 then what your comment was on meant to be. What is
8 the process of validating the data?

9 A So there's multiple types of validation.
10 Obviously, there is the initial validation required to
11 make sure that the data will actually load. If we
12 have the wrong field in the wrong place or the wrong
13 piece of data or we have 60 characters and we only
14 allow 30 characters for that particular field, that
15 kind of data validation has to happen so we know the
16 file will actually load into the system.

17 Beyond that, it is typically a customer's
18 responsibility to ensure that the data that actually
19 gets loaded is the data that they want in the system.
20 That's not something Lawson can really do for them.
21 We can't determine what data should be there. It's
22 really up to the customer once we've loaded it in to
23 run reports and validate and check and check against
24 other files or wherever they want to check against to
25 make sure that the data that they have now put in the

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1 system is the correct data that they need to run their
2 business.

3 Q Who decides what data goes into the item master?

4 A The customer.

5 Q Does Lawson have any role in deciding what
6 information what information, what item information
7 goes, into the Lawson item master?

8 A None whatsoever.

9 MS. ALBERT: Your Honor, could we have
10 clarification on the question? Are we talking
11 specifically about the Jackson implementation?

12 THE COURT: As far as I know.

13 Q Ms. Raleigh, let's ask a couple questions on this
14 issue. For Jackson, specifically, who decided what
15 data, what information, what part information, went
16 into the Lawson item master?

17 A Jackson decided.

18 Q Did Lawson have any control in making any
19 determination on what information went into the item
20 master?

21 A No, we didn't.

22 Q How long have you worked at Lawson?

23 A 13 1/2 years.

24 Q And in your 13 1/2 years at Lawson, have you ever
25 encountered a single situation where Lawson controlled

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1 the data that was entered into the Lawson item master?

2 A No.

3 MS. ALBERT: Outside the scope.

4 THE COURT: What?

5 MS. ALBERT: Outside the scope of my direct.

6 THE COURT: Wasn't it?

7 MR. SCHULTZ: It was not outside of the scope
8 of her direct and there's two reasons.

9 THE COURT: What did she ask that animated
10 the right to ask that question?

11 MR. SCHULTZ: She asked specifically about
12 data conversion. Specifically, Exhibit 216 at page 15
13 deals with data conversion. If we're going to be
14 talking about data conversion, we need to actually
15 understand what's is being converted and the scope of
16 what is being converted.

17 THE COURT: All she did was ask who did it.
18 That's all she did. She didn't talk about the
19 background of selecting it and so forth.

20 MR. SCHULTZ: That's what I'm getting at,
21 Your Honor.

22 THE COURT: That's the point. What do you
23 mean? She didn't ask about that. Ms. Albert didn't
24 ask about that. And your obligation is to stay within
25 the scope of her direct examination. She objects to

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1 it.

2 You can call the lady back. Just disregard
3 the answer for now. You can call her back and put her
4 on in your case if you want to, but right now we're
5 talking about what she asked. So the objection is
6 sustained.

7 BY MR. SCHULTZ:

8 Q During your direct examination with Ms. Albert,
9 she talked about converting data?

10 A Yes.

11 Q What is your understanding with respect to
12 conversion of data into the item master in terms of
13 who does it?

14 MS. ALBERT: Objection, ambiguous. I asked
15 specifically about one implementation for Jackson.

16 THE COURT: I think you asked who did the
17 conversion, and that's fair game for him to ask
18 further about that.

19 MS. ALBERT: I think his question was
20 broader.

21 THE COURT: It is.

22 MS. ALBERT: Than just this Jackson.

23 THE COURT: It is, but have you heard about
24 that camel that will sticks his nose under the tent?
25 Okay.

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1 BY MR. SCHULTZ:

2 Q Ms. Raleigh, do you remember the question? Maybe
3 I'll just ask it again.

4 A If you could.

5 Q In a conversion of legacy information into the
6 item master information, who's in charge of doing the
7 data conversion?

8 A Those responsibilities are typically shared
9 between Lawson and the customer. There are a variety
10 of steps in the overall process, and some of those
11 steps, certainly the education on how to get the data
12 formatted into the right file format, and how to use
13 the tools that will load it, those are almost always
14 responsibilities that Lawson will take because the
15 customer wouldn't know how to do it if it weren't for
16 our assistance.

17 THE COURT: Didn't you answer this question
18 in answering about the tables on 16, what was Lawson's
19 and what was the customer's responsibility?

20 THE WITNESS: For the scope of this
21 implementation, I did.

22 THE COURT: That's what he's talking about
23 now.

24 Q Who selected the data?

25 A The customer.

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1 Q I'd like to turn you now to table 3.5, which is on
2 page 17 of the document. If you'd look down on the
3 table, it's Bates number ending in 5376.

4 A I'm there.

5 THE COURT: Is that master file and
6 configuration table value building and scope.

7 MR. SCHULTZ: That is exactly it, Your Honor.

8 BY MR. SCHULTZ:

9 Q Do you recall testifying to this table earlier?

10 A I do.

11 Q And you had some discussion regarding Eclipsys.
12 Who is Eclipsys?

13 A Eclipsys is the vendor of the legacy software. So
14 it's the software that Jackson was using that we
15 replaced.

16 Q What was your involvement with this RFP and
17 statement of work process with Jackson?

18 A Ultimately, I was the person who oversaw the
19 execution of the work, but I participated at various
20 points along the way throughout the RFP and the
21 creation of the SOW.

22 Q In this table, there are some terms that are used
23 under file. One of the them is vendor master, one is
24 item master, one is vendor catalog. Whose terms are
25 those?

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1 A Those would be Jackson's terms.

2 Q Have they any relation to the Lawson system?

3 A No, not in this context here, no.

4 Q You also, if you'll look under the vendor catalog,
5 which is item 3, you mentioned earlier that there's a
6 Lawson response in bold letters?

7 A Correct.

8 Q Could you explain why there's a Lawson response in
9 bold letters in paragraph 3?

10 A So you have to understand that the Public Health
11 Trust of Miami is a government institution. So they
12 have very strict laws about the way that they request
13 for proposals and the way that they write contracts
14 with their vendors. So under the scope of that,
15 certain portions of the information provided here came
16 from Jackson.

17 So the first several columns of this table would
18 have only come from Jackson because only Jackson would
19 have known what systems they used, what data there
20 was, what they needed to get into our system.

21 Lawson's responsibility would be to respond to
22 those, right, in terms of how are we going to
23 accommodate those requests or those business needs, if
24 you will, that Jackson has articulated here.

25 So in this particular situation, it was Lawson --

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1 instead of just deleting the entire line, obviously,
2 which isn't necessarily within our right to do, Lawson
3 called out a response to make it clear that while the
4 customer is asking for where is the vendor catalog
5 information going to go in Lawson, Lawson's response
6 is, Well, what you're asking for, that's just part of
7 our item master. So it's covered in the prior line.
8 It's covered in line No. 2. It's the item master.

9 Q In other words, Lawson's system didn't have what
10 was paragraph No. 3 that Eclipsys had as a vendor
11 catalog?

12 MS. ALBERT: Objection, leading.

13 THE COURT: Sustained.

14 Look, you all are going to have to live with
15 all the terms that you used, and you can't be trying
16 to rewrite documents in the middle of the trial. So
17 that one is over. Move on.

18 Everybody lives with what they said,
19 historically, in life. There's a way to ask her a
20 question about this, but you haven't gotten there yet.

21 BY MR. SCHULTZ:

22 Q Ms. Raleigh, did Lawson write the term "vendor
23 catalog"?

24 A No.

25 Q Does Lawson have a vendor catalog?

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1 A No.

2 Q What does Lawson have?

3 A An item master.

4 Q How does the information get into the item master?

5 A It's extracted from the customer's legacy system,
6 it's changed into the appropriate format, and then
7 it's loaded using our proprietary tools into our
8 system, into the item master.

9 Q If we look back at that table under lines 1 and 2,
10 there's what is referred to as Microsoft add-ins.
11 What is Microsoft add-ins?

12 A Microsoft add-ins is a Lawson product that allows
13 you to use Microsoft Excel, which is a tool that most
14 of us are somewhat familiar with using, to load data
15 into the Lawson tables. So it's an easier, more user
16 friendly product and way of getting an Excel
17 spreadsheet's worth of data into a particular table in
18 Lawson.

19 Q In order to use Microsoft add-ins, does the data
20 need to be in a particular format beforehand?

21 A Yes, it does.

22 Q What format does it need to be in?

23 A The data needs to be in a format that is
24 consistent with the database layout of Lawson.

25 So certain data needs to be in certain columns in

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1 order for it to load properly. If you just put it
2 wherever you want it, the system won't understand how
3 to read that data and put it in the right place in
4 Lawson. Is that clear?

5 Q I think I'm done with that exhibit.

6 I'd like to refer you to Exhibit 209, which is
7 another exhibit you looked at earlier.

8 THE COURT: I don't believe she did. She did
9 not look at 209.

10 MR. SCHULTZ: That's correct.

11 Q Actually, Ms. Raleigh, you talked about, on
12 examination before, about the services that you do
13 provide.

14 A Yes.

15 Q Are their services that you don't provide?

16 A Certainly, there are.

17 MS. ALBERT: Objection. Outside the scope,
18 Your Honor.

19 THE COURT: Do you want to bring her back for
20 your case?

21 MR. SCHULTZ: Your Honor --

22 THE COURT: I'm sorry, but that's the way the
23 rules are. And I've told you before in a pretrial
24 conference that we are going to try this case in
25 accordance with the rules about who was testifying,

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1 what they were saying, and whether or not the scope of
2 direct applied. Otherwise, what happens is you end up
3 putting your case on in the middle of their case, and
4 I told you why I didn't want that done.

5 Sometimes it can be done, but I'm staying
6 with what I told you long ago.

7 Objection sustained.

8 MR. SCHULTZ: I can confine the questions to
9 the questions that were asked on direct examination,
10 Your Honor.

11 BY MR. SCHULTZ:

12 Q Ms. Albert asked you questions about the
13 conversion process with respect to Jackson.

14 A Yes.

15 Q Were there any modifications to the Lawson system
16 in the Jackson situation?

17 A In the procurement system, no.

18 Q If there had been modifications to the Jackson
19 system, would Lawson support that?

20 A No.

21 Q Why not?

22 A The scope of our global support organization is
23 confined to only the software that we write and we
24 release. So Lawson's global support organization is
25 just that. They do not support modified programs.

1 MR. SCHULTZ: Thank you.

2

3 REDIRECT EXAMINATION

4 BY MS. ALBERT:

5 Q Just a couple more questions, Ms. Raleigh.

6 A Sure.

7 MS. ALBERT: Mike, if you could, could we
8 turn back to Plaintiff's Exhibit 216? First page,
9 please.

10 Q This document, Plaintiff's Exhibit 216, this is
11 Lawson's statement of work that it provided to Jackson
12 Health; is that correct?

13 A That's correct.

14 THE COURT: You mean Lawson authored the
15 document? Is that what you're saying?

16 THE WITNESS: That's correct.

17 Q Thank you.

18 Now, could we turn to page 17 of the exhibit,
19 please. And the Bates number on that page ends with
20 376.

21 A I'm there.

22 Q Now, referring back to that response that
23 Mr. Schultz directed you to where Lawson has a
24 response in bold, when Lawson wrote this response,
25 Lawson said that Jackson's vendor catalog data from

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1 its prior Eclipsys system would be loaded into the
2 item master of the Jackson system, correct?

3 A Yes. This is item master data that would be
4 loaded into the item master.

5 THE COURT: That wasn't the question that she
6 asked you. She asked you whether or not what have in
7 their vendor catalogs would be loaded into the item
8 master.

9 That's the question, I think, isn't it?

10 MS. ALBERT: That's correct, Your Honor.

11 THE COURT: Yes or no to that one? Because
12 you answered yes, and then you changed the question.
13 So I'm not sure that the record is clear.

14 MR. SCHULTZ: Your Honor, may I make a point
15 here?

16 THE COURT: No, you're not testifying.

17 MR. SCHULTZ: I'm not testifying, but the
18 witness clearly could not answer with a yes or no, and
19 I ask that she be allowed to answer the question.

20 MS. ALBERT: Your Honor, I object.

21 THE COURT: One at a time.

22 Your concern is overruled.

23 Answer the question yes or no. The question
24 is: When the installation occurred, was -- go with
25 it.

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1 BY MS. ALBERT:

2 Q When Lawson wrote this response, this statement of
3 work, Lawson told Jackson that Jackson's vendor
4 catalog data would be loaded into the item master of
5 the Lawson system; is that correct?

6 A I know you want a yes or no out of me.

7 THE COURT: That's what you have to do is yes
8 or no. You pick.

9 THE WITNESS: I'll pick no then because I
10 don't agree with the way that it's being portrayed.

11 Q Well, Lawson told Jackson that catalog information
12 is a part of Lawson's item master; is that correct?

13 A Correct.

14 MS. ALBERT: Thank you. No further
15 questions.

16 THE COURT: Is she the witness you wanted to
17 come back? You talked about this in one of our
18 conferences on the telephone, and you wanted to know,
19 and I believe that the question was she was going to
20 be out at the country at some point in time. Do you
21 want her back or do you want not want her back as part
22 of your case? Because you're going to start on
23 Tuesday, right, with any luck?

24 MR. SCHULTZ: Your Honor, we'd like to
25 reserve the right to bring her back.

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1 THE COURT: Well, I'm going to tell her to be
2 back if you tell her to be back. That's the terms
3 under which she gets released. Otherwise, she can
4 stay here like all the rest of the witnesses did. Is
5 that what you want to do?

6 MR. SCHULTZ: Yes, Your Honor.

7 THE COURT: Obviously, or maybe not
8 obviously, you will be recalled to present testimony
9 in Lawson's case. And you can leave and go about your
10 business provided that you respond to the return call
11 that they give you. Do you agree to do that?

12 THE WITNESS: I do.

13 THE COURT: All right. They have an
14 obligation to try to work consistently with your
15 schedule, but we haven't done real well with schedules
16 so far.

17 THE WITNESS: I understand.

18 THE COURT: But we're working on improving.

19 THE WITNESS: That's all right. I
20 understand.

21 THE COURT: Actually, we haven't done badly.
22 Thank you for being with us.

23 THE WITNESS: Thank you.

24 (The witness was excused from the witness
25 stand.)

1 THE COURT: All right. I think that it's
2 Friday afternoon and people need to go home for the
3 weekend. We're not going to have any trial hearings
4 on Monday. It will begin at 9:00 on Tuesday.

5 I'm told by the weather people that I listen
6 to on the radio coming in in the morning, there's
7 potentially a big snowstorm coming on Tuesday. I
8 don't know. You know how that goes.

9 There's a mechanism Mr. Neal will tell you
10 about.

11 THE CLERK: Actually, the jury clerk has
12 given you a card to take home.

13 And when you call me around 6:15 Tuesday
14 morning, I'll call her. Assuming we're both up at
15 6:15.

16 THE COURT: I'm always up at 6:15. My dog
17 gets me up.

18 All right. If you'll leave your pads with
19 Mr. Neal. He'll take care of them. Have a nice
20 weekend and drive carefully.

21 (The jury is out.)

22 THE COURT: You can be excused if you'd like
23 to go catch a plane. Or are you stranded for the
24 night?

25 THE WITNESS:

1 MS. RALEIGH: I hope not.

2 THE COURT: I hope not.

3 All right. Now, you anticipate finishing
4 Tuesday; is this correct? How many more witnesses do
5 you have?

6 MR. ROBERTSON: We have three videotape
7 depositions of customers, Your Honor. We have Mr.
8 Christopherson, Mr. Lohkamp, and then we have our
9 expert Mr. Niemeyer on the source code. I don't
10 anticipate the direct of Mr. Niemeyer will be very
11 long.

12 THE COURT: What's very long? What does that
13 mean?

14 MR. ROBERTSON: An hour of direct.

15 THE COURT: How many the customer
16 depositions?

17 MR. ROBERTSON: Customer depositions are
18 2 1/2 hours total length. And then we have probably
19 some short testimony from Mr. Farber. Perhaps half an
20 hour tops.

21 THE COURT: Look at the depositions because
22 there was an awful lot of repetition in there. I
23 think basically it could have been stipulated that
24 Lawson in everything that it does tries to be accurate
25 in what it tells to its customers. I think that could

1 have been stipulated, and we went through almost an
2 hour of testimony about that.

3 I understand the need to present it once, but
4 another way to deal with that is to turn to them and
5 say "Do you stipulate? And they say yes. And then go
6 on. Have you all tried that method?

7 MR. ROBERTSON: We have, Your Honor.

8 THE COURT: Try it.

9 MR. ROBERTSON: Not with complete success.

10 THE COURT: Try it some more. You're doing
11 pretty well.

12 Now, what about the objection to the
13 testimony of Mr. Frank that was on those pages 22
14 through 25 or entries 22 through 25 of the --

15 MR. STRAPP: Your Honor, we had an
16 opportunity to review the final pretrial order that
17 lists the designations that were agreed to by the
18 parties. In every single (unintelligible) on this, I
19 just doublechecked was in the final pretrial order.
20 It was also included in an email confirming that these
21 were the clips to be played sent on New Year's Eve to
22 Lawson's counsel to which they agreed that those clips
23 were --

24 THE COURT: Well, I think that was fair to
25 send it to them on New Year's Eve and expect them to

1 agree to it that night.

2 MR. STRAPP: I sent it right around midnight.

3 THE COURT: Happy New Year.

4 Is that right? Is it in the pretrial order
5 that way?

6 MR. SCHULTZ: It is, Your Honor. I think,
7 Mr. Strapp, was there one --

8 MR. STRAPP: It's all in there.

9 MR. SCHULTZ: When we were talking, there was
10 a small segment that was not in there, but apparently
11 that is corrected. It was in there.

12 Your Honor, apparently that was accurate that
13 the pretrial order did have those stipulations in the
14 record. However, based on a review of that
15 information along with the exhibits that went along
16 with that testimony, they did display financial
17 information, which Your Honor knows is part of the
18 damages issues and should have been excluded. So we
19 would object to that testimony still.

20 THE COURT: Just so I understand what you
21 say. You're saying that that testimony related to an
22 exhibit, and that the exhibit was excluded in the
23 pretrial order?

24 MR. SCHULTZ: Your Honor, may I check with
25 counsel on that? I'm not sure.

1 THE COURT: Yes. Look at it and see.

2 MR. SCHULTZ: Your Honor, I don't think there
3 that was an exhibit that was excluded. The problem
4 with the issue is that the testimony that was read in
5 and on the screen was that the exhibit and the
6 information was brought up onto the screen. It
7 shouldn't have been. It's financial information.

8 THE COURT: You are you saying that you erred
9 in agreeing that it could be admitted in the pretrial
10 order?

11 MR. SCHULTZ: Yes, Your Honor.

12 THE COURT: That's all right. That happens.

13 MR. SCHULTZ: It's just the financial part,
14 Your Honor, not the actual testimony itself, but the
15 financial aspect of it which was in the document.

16 THE COURT: I think most of the testimony is
17 financial, isn't it?

18 MR. SCHULTZ: I'm being corrected, Your
19 Honor. It is the financial testimony and the
20 document.

21 THE COURT: Yeah, the testimony relates to
22 the financial pages. Okay.

23 So he says that in the whole pretrial order
24 situation, they fouled up, and they made a mistake.
25 And I bet you before the case is over, you'll be

1 standing and delivering on a statement like that
2 yourself. At least my experience in large litigation
3 was that sometimes I fouled up.

4 In fact, you know what a good lawyer is? A
5 good lawyer is one who knows how to get himself or
6 herself out of the trouble that he or she inevitably
7 puts before him or her because of things you do. And
8 if there is some kind of venality or utter and
9 complete neglect to it, then the courts aren't very
10 forgiving, but I'm not sure we have any of that here.

11 So let's face this question: Why is this
12 information relevant to anything that's left in the
13 case is I guess the pertinent issue.

14 MR. STRAPP: Sure, Your Honor. Just as a
15 preference, there was no ruling that all financial
16 information of Lawson's is out of the case. In fact,
17 information about commercial success of Lawson's
18 products, that information is relevant to issues, for
19 example, like secondary consideration.

20 THE COURT: Is that what this is all about?

21 MR. STRAPP: Well, this information is
22 relevant to the implementation and installation
23 revenue. The fact that Lawson not only licenses the
24 software that's at issue here, but it also generates
25 revenue from servicing and installing it, and that

1 goes to the indirect infringement issues here that
2 relates to what's happening on the customer's side
3 once the licensing is done.

4 THE COURT: You say it goes to it, what do
5 you mean? You're saying it's relevant to it.

6 MR. STRAPP: Because the maintenance and the
7 service that many Lawson does after the software has
8 already been licensed by its customers is relevant to
9 elements that are necessary to prove both inducement
10 of infringement as well as contributory infringement.

11 THE COURT: How so?

12 MR. STRAPP: Because it goes to the point
13 that Lawson is aiding, abetting, assisting its
14 customers in performing the claimed elements of the
15 method claims, and it shows that the systems --

16 THE COURT: How does it show that? You're
17 telling me, you're basically saying here that Lawson
18 gets revenues, and how much of the revenue, I guess.
19 Doesn't it say how much over here?

20 MS. STOLL-DeBELL: I think that was part of
21 our problem, Your Honor, is it does say how much.

22 THE COURT: Wait a minute. Is that your only
23 problem?

24 MS. STOLL-DeBELL: I don't think it's
25 relevant. The fact that we offer these services,

1 that's relevant, but how much we charge for them and
2 how much we get paid for them is not relevant.

3 THE COURT: Wait just a minute. Let me hear
4 him explain why that's relevant.

5 Why is what they get paid for it relevant?

6 MR. STRAPP: Your Honor, I think that the
7 testimony here generally relates to the maintenance,
8 service and licensing revenue. There's different
9 streams of revenue. That indicates that Lawson is
10 both implementing, maintaining, servicing and
11 installing the software at its customer's site.

12 THE COURT: Is that in dispute that Lawson
13 does that?

14 MS. STOLL-DeBELL: Didn't we just hear
15 testimony on that?

16 THE COURT: I think their own witness said
17 that.

18 MR. STRAPP: We did hear testimony about
19 that, but we also have deposition testimony, and this
20 deposition testimony was not objected to. The
21 exhibits are all in evidence. They all went through
22 the vetting process of Lawson's counsel.

23 THE COURT: Yes. They said that and they
24 said they made a mistake. And so the real question
25 I'm interested in is why does this come in given that

1 there are no damages issues? And you need to tell me
2 that, and you can't just say it goes to it. You have
3 to say it's relevant because it establishes this, and
4 that is an element or component of our proof.

5 MR. STRAPP: Certainly, Your Honor. It's
6 relevant --

7 THE COURT: What's "it"?

8 MR. STRAPP: The testimony that is being
9 objected to now of the deposition of Mr. Frank is
10 relevant because it shows that Lawson is servicing,
11 installing and maintaining software that is at its
12 customer's site. That software is software that is
13 accused of infringing the claim elements.

14 THE COURT: Stop. They don't dispute that, I
15 don't think. Do you?

16 MS. STOLL-DeBELL: We don't dispute that we
17 do those services. I just contend that how much we
18 get paid for it is not relevant.

19 THE COURT: Do you dispute whether you get
20 paid for it is relevant as opposed to how much?

21 MS. STOLL-DeBELL: I think it's minimally
22 relevant.

23 THE COURT: Well --

24 MS. STOLL-DeBELL: The fact we get paid for
25 it, I don't dispute that that is minimally relevant,

1 but I don't think the amount is relevant, and I think
2 it's prejudicial.

3 THE COURT: Now the issue is how much. Why
4 is how much they get paid for doing these services
5 that you just outlined, why is that relevant to any
6 issue that's in the case?

7 MR. STRAPP: The amount didn't go so much to
8 an infringement issue. That goes to a validity issue,
9 and the issue that it goes to invalidity is a
10 secondary consideration of nonobviousness. One of the
11 secondary considerations recognized by the Supreme
12 Court all the way back to the 1950s was the Graham v.
13 John Deere case was whether or not the accused
14 infringer enjoys commercial success related to the
15 products that are being accused of infringement.

16 THE COURT: So it's relevant to invalidity as
17 a secondary consideration.

18 MR. STRAPP: Yes, correct.

19 THE COURT: Okay. Well, we can deal with
20 that then, can't be?

21 MS. STOLL-DeBELL: We went through this exact
22 issue at the pretrial conference and they argued the
23 exact thing that Lawson's sales are relevant to
24 commercial success and non-obviousness. And we went
25 through the interrogatories. I went through them with

1 you and showed you how they did not disclose that.

2 And you agreed with me.

3 THE COURT: Who did not disclose what?

4 MS. STOLL-DeBELL: They didn't disclose the
5 argument that Lawson's sales showed commercial success
6 and were relevant to non-obviousness. They didn't do
7 it for Lawson. They talked about SAP and Ariba, as
8 you will recall. Those financial numbers they were
9 going to use for their non-obviousness case.

10 THE COURT: Are you talking about the
11 arguments that were made in respect of the rulings on
12 the experts is where this came up or something else?

13 MS. STOLL-DeBELL: This was all of the
14 financial documents. It was all of Lawson's sales
15 spreadsheets and our annual report. There was a big
16 list of damages documents, as you'll recall, and
17 Mr. Strapp made the same exact argument then as he
18 made now. And we went through it. I pulled out the
19 interrogatory responses, and they never, never said
20 they were going to rely on Lawson's sales to show
21 commercial success of their invention.

22 MR. ROBERTSON: I have a practical solution.
23 We can either redact the numbers from the document,
24 and we'll go back and look at the testimony again, and
25 if there was discussion of the revenues, we'll take

1 that out. The case isn't going to turn on seven
2 minutes of testimony of Mr. Frank.

3 THE COURT: I don't think so, but I did need
4 to get -- since you-all are insisting and they are
5 objecting, it's probably my job to be handle it. What
6 I was going to suggest is that you go back and study
7 the transcript of the final pretrial conference and
8 the rulings that were made, and you see if you have
9 been foreclosed from it already by the argument that
10 you did not ever disclose that you were going to use
11 Lawson's revenues to show commercial success.

12 I don't have any question but that Lawson's
13 revenues are relevant to commercial success. I think
14 that is fairly well settled. But if there was a
15 discovery request that said for you to do that and you
16 didn't do it, then that may be sufficient to preclude
17 admission of the evidence.

18 On the other hand, it may be that another
19 person in this room made an error in making a ruling
20 on that score, and I wonder who that might be.

21 So let's go check it out because it doesn't
22 have anything to do with infringement anyway. It's
23 admissible, if at all, on the invalidity argument, and
24 we'll deal with that when the time comes.

25 So you're going to be kicking off sometime in

1 the afternoon on Tuesday, it looks like. If not, you
2 may be kicking off on Wednesday morning, it depends.

3 My wife criticizes me substantially for
4 checking out the NOAA weather and other weather items
5 like the Weather Channel, and she accuses me of being
6 an old man with nothing to do because I do that, but
7 there are times when it comes into play. And I saw
8 that there is a very significant snowstorm supposed to
9 hit the Midwest, and I don't want you-all to go home
10 over the weekend and get trapped there.

11 So be advised that being trapped in the snow
12 is not a sufficient excuse not to start the trial.

13 Mr. Carr will be ready to go.

14 And I am not, I want you to know, being paid
15 by any merchant in town to keep you-all here.

16 All right. Thank you very much. Have a nice
17 weekend. Get some rest.

18 (The proceedings were adjourned at 5:17 p.m.)
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